



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Tyson Farms, Inc.
FOR
Temperanceville Complex Wastewater Treatment Plant
VPDES Permit No. VA0004049**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Tyson Farms, Inc., regarding the Temperanceville Complex Wastewater Treatment Plant, for the purpose of resolving certain violations of the Permit, the State Water Control Law and the VPDES Permit Regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "DMR" means Discharge Monitoring Report.

5. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
6. "Facility" means the wastewater treatment plant located at 11224 Lankford Highway in Temperanceville, Accomack County, Virginia, that treats and discharges treated effluent from three nearby Tyson Farms, Inc., processing plants -- a poultry hatchery, a poultry processing plant, and a plant for rendering poultry-processing byproducts into usable products -- under VPDES Permit No. VA0004049.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
9. "Permit" means VPDES Permit No. VA0004049, which was issued under the State Water Control Law and the Regulation to Tyson Farms, Inc., on February 22, 2005, and which expired on December 5, 2010. The Permit was renewed effective December 6, 2010, and expires December 5, 2015.
10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 9 VAC 25-31-10.
11. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
12. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
15. "305(b) report" means the report required by Section 305(b) of the Clean Water Act [33 United States Code § 1315(b)] and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
16. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia
17. "Tyson" means Tyson Farms, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Tyson is a "person" within the meaning of Va. Code § 62.1-44.3.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.
21. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
22. "WET" means whole effluent toxicity.

SECTION C: Findings of Fact and Conclusions of Law

1. Tyson owns and operates the Facility. The Permit allows Tyson to discharge treated effluent from the Facility to an unnamed tributary to Sandy Bottom Branch in compliance with the terms and conditions of the Permit.
2. Sandy Bottom Branch is located in the Chesapeake Bay/Atlantic/Small Coastal Basins and is listed in DEQ's 305(b) report as impaired due to high levels of *e. coli* bacteria and copper and for deficiencies in benthic-macroinvertebrate bioassessments. The sources of the impairments are unknown.
3. Part I.A.1 of the Permit requires Tyson to submit DMRs for discharges of processing plant effluent and stormwater runoff from the Facility to State waters through Outfall 001. Effluent characteristics are to be monitored monthly with the exception of WET, which is to be monitored quarterly.

4. Part I.A.1 of the Permit, prior to its renewal effective December 6, 2010, also required Tyson to submit DMRs quarterly for discharges of stormwater runoff from the Facility to State waters through Outfall 002.
5. In submitting its DMRs for Outfall 001 for the month of April 2009 Tyson indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for total nitrogen ("TN").
6. In submitting its DMR for Outfall 001 for the month of August 2009 Tyson indicated that it failed to meet minimum discharge limitations for dissolved oxygen ("DO").
7. In submitting its DMRs for Outfall 001 for the 2nd and 3rd Quarters of 2009, Tyson indicated that it exceeded discharge limitations for WET.
8. In submitting its DMRs for Outfall 001 for October 2009, Tyson indicated that it exceeded discharge limitations for total recoverable ("TR") copper.
9. In submitting its DMR for Outfall 001 for the month of June 2010, Tyson indicated that it exceeded discharge limitations for TN.
10. In submitting its DMRs for Outfall 001 for the months of July and August 2010, Tyson indicated that it exceeded discharge limitations for TN and ammonia.
11. During a routine Facility inspection on March 18, 2010, DEQ compliance staff observed a discharge from Outfall 002. In submitting its DMR for Outfall 002 for the 1st Quarter 2010, Tyson indicated that no discharge from Outfall 002 had occurred during the quarter.
12. TRO issued a Warning Letter and Notices of Violation for the exceedances described in paragraphs C(5), C(6), C(7), C(9) and C(10), above, as follows: Warning Letter No. W2009-08-T-1009 (dated August 10, 2009) and in Notices of Violation ("NOV") W2009-11-T-0001 (dated November 3, 2009), W2010-08-T-0002 (dated August 10, 2010), W2010-09-T-0001 (dated September 7, 2010), and W2010-09-T-0004 (dated September 22, 2010). The failure to report the discharge from Outfall 002 described in paragraph C(11), above, was addressed in NOV No. W2010-06-T-0001 (dated June 14, 2010). No WL or NOV was issued for the TR copper exceedance described in paragraph C(8), above.
13. Tyson responded to the Warning Letter and each of the Notices of Violation. Tyson attributed the TN exceedance reported on the April 2009 DMR to the failure of the Facility's sub-surface aeration system, which was being replaced with surface aerators as part of an overall Facility upgrade. Tyson attributed the TN and ammonia exceedances reported on the August 2010 DMR to the temporary reduction in the Facility's ability to control nitrogen levels (as both TN and ammonia) while the Facility was being upgraded. Specifically, subsurface aerators were being removed and replaced with surface aerators and the anoxic lagoon was being converted into an additional aeration basin. Tyson

represented that upgrades to the aeration system had been completed by August 13, 2010. Tyson has reported no violations of ammonia or TN effluent limitations since August 2010.

14. In its responses Tyson stated that it was “unsure of the stressors (if any)” that had caused the WET exceedances reported on the DMRs for the 2nd and 3rd Quarters of 2009. Tyson attributed the low DO level reported on the August 2009 DMR to improper sampling by a new operator and stated that all Facility operators will be retrained in proper sampling procedures. The TR copper exceedance reported on the October 2009 DMR was attributed to a sampling error by a Facility operator.
15. Tyson responded to the report of the March 18, 2010, compliance inspection by electronic mail dated May 14, 2010, in which it stated that Tyson was looking at a number of options for reducing storm water discharges from Outfall 002. Tyson subsequently requested that Outfall 002 be eliminated from the renewed Permit. Storm water that accumulates in the storm water retention pond at which Outfall 002 was formerly located is now diverted to the expanded, upgraded waste water treatment Facility rather than discharged directly to State waters; the berm surrounding the storm water retention pond has been reinforced; and a four-foot concrete wall has been constructed across the former discharge point for the former Outfall 002 to prevent a discharge during a heavy rain event. Consequently, the renewed Permit no longer authorizes discharges to state waters from the storm water retention pond.
16. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
17. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
18. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
19. The Department has issued no permits or certificates to Tyson other than VPDES Permit No. VA0004049.
20. Sandy Bottom Branch is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
21. Based on the results of the DMRs and accompanying documentation submitted by Tyson to DEQ for the months of April 2009 through August 2010, the March 18, 2010, compliance inspection, and Tyson’s responses to the Warning Letter and NOVs, the Board concludes that Tyson has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging storm water and treated effluent from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(5) through C(11), above.

22. Tyson has submitted documentation, as noted in paragraphs C(13), C(14) and C(15), above, that verified that the violations described in paragraphs C(5) through C(11), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Tyson, and Tyson agrees pay a civil charge of \$8,330 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Tyson shall include its Federal Employer Identification Number (FEIN) (56-0754148) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Tyson for good cause shown by Tyson, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Tyson admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Tyson consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Tyson declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Tyson to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tyson shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Tyson shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tyson shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Tyson intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tyson.

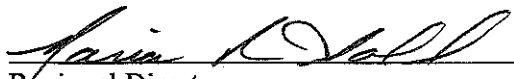
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Tyson has completed all of the requirements of the Order;
- b. Tyson petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Tyson.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tyson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Tyson and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Tyson certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Tyson to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Tyson.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Tyson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5 day of August, 2011.

acting 
Regional Director
Department of Environmental Quality

Consent Order

Tyson Farms Inc., (Temperanceville Complex); VPDES Permit No. VA0004049

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Tyson Farms, Inc., voluntarily agrees to the issuance of this Order.

Date: 4/18/11 By: William Ricken, Complex Mgr.
(Person) (Title)
Tyson Farms, Inc.

Commonwealth of Virginia

Town/County of Accomack

The foregoing document was signed and acknowledged before me this 18 day of April, 2011, by Dr. William Ricken who is Complex Manager of Tyson Farms, Inc., on behalf of the corporation.

Lashauna N. Christian
Notary Public

7189964

Registration No.

My commission expires: August 31, 2012

Notary seal:

